

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 874 of 1995

with

FIRST APPEALS No.875 TO 899 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

THAKOR JAVAJI HIRAJI

Versus

SPL LAQ OFFICER

Appearance:

MR A B Munshi for Mr AJ PATEL for Petitioner
Mr Digant P Joshi, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 22/07/1999

ORAL (COMMON) JUDGEMENT

The appellants of this group of First Appeals which are filed under section 54 of the Land Acquisition Act, 1894 (for short 'the Act'), read with section 96 of the Code of Civil Procedure, have challenged the common judgment and award dated January 28, 1994 passed by the

learned Asstt. Judge, Mehsana in a group of Land Reference Case Nos. 602 to 627 of 1988.

2. Agricultural lands of village Shobhasan came to be acquired for public purpose viz; Undhai - Shobhasan road. Notification under section 4(1) of the Act was published in the Government Gazette on May 10, 1984, which was followed by the notification published under section 6 of the Act on November 22, 1984. The land owners, whose lands came to be acquired under the notification, were issued notices under section 9(3) of the Act for determination of compensation. The land owners claimed compensation of the acquired lands at Rs.10/- per sq. metre. The Land Acquisition Officer, on the basis of material supplied by the land owners and other materials available with him, made his award on July 4, 1987 offering compensation of the acquired lands to the claimants at the rate of 0.80 paise per sq. metre.

3. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate looking to the fertility of the lands. Therefore, they filed written application under section 18 of the Act before the Land Acquisition Officer, requiring him to refer the application to the District Court for determination of the compensation of the acquired lands. The application filed by the claimants came to be numbered as Land Reference Case Nos.602 to 627/88. The said Land Reference cases came to be transferred to the Court of learned Asstt. Judge, Mehsana, who consolidated all the Reference Cases. Land Reference Case No.618/88 was treated as the main Land Reference case and evidence was led in the said case.

4. The opponent-appellant filed written statement at Exh.6, inter-alia, contending that the Special Land Acquisition Officer has considered all the relevant factors governing fixation of compensation and had awarded to whatever maximum extent it was possible. It was contended that the award of the Land Acquisition Officer is not arbitrary, but just and adequate compensation was awarded to the claimants, and therefore, pleaded that the Reference Cases be dismissed.

5. On the basis of the above pleadings, the learned Asstt.Judge framed issues at Exh.7. The claimants, to substantiate their claim of Rs.10/- per sq.metre, examined Patel Natubhai Sankalchand, claimant of Land Reference Case No.607/88 at Exh.25. The witness described the topography and its distance between village

Undhai and village Shobhasan. It was deposed that they used to raise 3 crops in a year and were earning Rs.4000/- to Rs.5000/- per year per vigha. It was also deposed by the witness that village Shobhasan is a developed village having facilities of S.T. bus and a School. He deposed that the boundaries of village Shobhasan and Undhai were touching each other. During his deposition, the witness produced previous award of the Reference Court Exh.24 with respect to the acquired lands of village Undhai wherein the Reference Court had awarded compensation at the rate of Rs.15/- for the acquired non-agricultural lands.

6. The Land Acquisition Officer, Unit I examined Shankarlal Manilal Pandya, Exh.64. He deposed that the distance between Undhai and Shobhasan is half a kilo metre and the boundary of both the villages touches each other. This witness admitted in his cross-examination that the agricultural lands of village Undhai and Shobhasan were having same fertility.

7. The Reference Court, on the over all appreciation of the documentary as well as oral evidence and the judgment and award in Land Reference Cases No.196/86 to 199/86 produced at Exh.24 determining the market value of the acquired lands at Rs.6.80 paise per sq. metre, which has given rise to filing of this group of Appeals by the appellant-claimants who claim additional compensation of Rs.3/- per sq.metre.

8. The State of Gujarat had challenged the impugned award in the High Court by filing First Appeals No.2163 to 2168/94, which came to be dismissed by the Court (Coram: N J Pandya, J.) on 7.7.1995.

9. Learned Advocate for the appellants, vehemently submitted that the Reference Court had not taken into consideration the previous award Exh.24 which was most comparable and the determination of the market value of the acquired lands ought to have been fixed at Rs. 10/per sq. metre. It is submitted that the lands of village Undhai and Shobhasan were having same fertility. That the notification issued under Section 4(1) of the Act in respect of the acquired lands of village Undhai and Shobhasan were in the near proximity of time. It is vehemently submitted that the claimants' witness Patel Natubhai described the fertility and situation of the acquired lands which shows that the acquired lands were more fertile and the claimants used to raise 3 crops in a year. On the other hand, learned Asstt.Government Pleader, Mr D P Joshi submitted that the Reference Court

had awarded just and adequate compensation and previous award at Exh.24 was not comparable for the determination of the market value of the acquired lands. He, therefore, submitted that the appeals should be dismissed.

10. It is settled legal principle as laid down by the Apex Court and followed by the High Courts that one of the mode of determination of compensation in absence of other evidence, is previous awards made by the Courts or the Land Acquisition Officer in respect of which the lands which are comparable and the notification under section 4(1) of the Act was issued in the near proximity of time. If the lands are comparable having more fertility, in my opinion, the lands of village Undhai and village Shobhasan were having same fertility. The acquired lands of village Shobhasan were having facility of irrigation and the claimants used to raise 3 crops in a year. The boundaries of village Shobhasan and village Undhai are also touching each other. In my opinion, the Reference Court had not committed any error in relying on previous award Exh.24 which related to the acquired lands of village Undhai. Notification issued under section 4(1) of the Act for acquiring the lands of village Undhai which were the subject-matter of the previous award Exh.24 came to be published on August 9, 1984. The notification of the required lands of village Shobhasan was published on May 10, 1984. Thus the notifications of both the villages for acquisition of the lands for the same purpose and were issued in near proximity of time. As stated earlier, lands of both the villages were having same fertility and the previous award Exh.24 was most comparable for determination of the market value of the acquired lands. For non-agricultural lands of village Undhai, the Reference Court had determined market value at Rs.15/- per sq. metre. It is common knowledge that for converting agricultural lands into non-agricultural lands, some amount has to be deducted towards expenses and paying N.A. assessment charges for converting agricultural lands into non-agricultural lands. If 1/3 amount is deducted towards expenses of converting lands into non-agricultural lands, then the price of agricultural land would be Rs.10/- per sq.metre. The claimants in these appeals have claimed additional compensation of Rs.3/- per sq. metre. They have already been awarded Rs. 6.80 paise per sq. metre by the Reference Court and the Land acquisition Officer. The additional compensation claimed by the claimants is most reasonable. It would not be out of place to mention here that the award Exh.24 was challenged by the State of Gujarat in this High Court in First Appeals No.410 to

413/94 and the claimants of those Land Reference Cases had filed cross-objections in the First Appeals. The Court (Coram: K R Vyas, J.), by order dated June 30, 1994, dismissed the appeals filed by the State and allowed the cross objections filed by the claimant and determined the market value of the acquired non-agricultural lands of village Undhai at Rs. 18/- per sq. metre. If 1/3 of the amount is deducted from Rs.18/-, it would come to Rs.12/- per sq. metre. While in the present Appeals, the claimants only claimed enhanced compensation of Rs.3/- per sq. metre, which in my opinion, is on the contrary, on a lower side. Therefore, the appeals filed by the claimants deserve to be allowed. The compensation of the acquired lands is determined at the rate of Rs.9.80 paise per sq. metre. The claimants would be entitled to receive compensation at the rate of Rs.9.80 paise per sq. metre for the acquired lands of village Shobhasan with all the statutory benefits under section 23(1-A) 23(2) and interest under the amended provisions of Section 28 of the Act.

11. As a result of the foregoing discussion, this group of Appeals are allowed with costs. Decree be drawn in terms of this judgment.

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msp.